

PATENT
Docket No. P-10998.00
(134.01930101)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): SPARER et al.) Group Art Unit: 1618
)
)
Serial No.: 10/640,853) Examiner: James W. Rogers
Confirmation No.: 9178))
)
Filed: August 13, 2003))
)
For: ACTIVE AGENT DELIVERY SYSTEMS, MEDICAL DEVICES, AND
 METHODS

REQUEST FOR REFUND

Mail Stop 16
Director of the USPTO
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir/Madam:

Applicants filed a Request for Refund on February 11, 2011. On March 8, 2011, a Communication issued denying the Request for Refund.

As a result of a telephone conference between Examiner Gray and Applicants' representative, Todd M. Schenk, Examiner Gray suggested refiling the Request for Refund. Per the Examiner's suggestion, Applicants request a refund in the amount of \$1080 to Deposit Account 13-4895, for at least the reasons below.

On December 3, 2010, Deposit Account No. 13-4895 was charged \$540 for a Notice of Appeal and \$540 for an Appeal Brief. Applicants believe these charges are incorrect.

Background

On July 11, 2007, Applicants filed a Notice of Appeal; on July 12, 2007, \$500 was charged to Deposit Account 13-4895.

On January 29, 2008, Applicants filed a Notice of Appeal; on January 30, 2008, \$510 was charged to Deposit Account 13-4895.

On March 28, 2008, Applicants filed an Appeal Brief; on April 1, 2008, \$510 was charged to Deposit Account 13-4895.

In total, \$1520 was charged to Deposit Account 13-4895 with no final Board decision being made in the aforementioned appeals.

On September 27, 2010, Applicants filed a Notice of Appeal, and stated that they believed no fee was required because, pursuant to M.P.E.P. §1204.01, the previously-paid appeal fees may be applied to the filing of the present Notice of Appeal as long as a final Board decision has not been made on either of the prior appeals.

On November 29, 2010, Applicants filed an Appeal Brief, and stated that they believed no fee was required because, pursuant to M.P.E.P. §1204.01, the previously paid appeal fees may be applied to the filing of the present Appeal Brief as long as a final Board decision has not been made on either of the prior appeals.

On December 3, 2010, Deposit Account 13-4895 was charged \$540 for a Notice of Appeal fee and \$540 for an Appeal Brief fee.

Applicants request that Deposit Account 13-4895 be refunded \$1080 (\$540 for a Notice of Appeal fee and \$540 for an Appeal Brief fee).

Enclosed is a copy of M.P.E.P. §1204.01 and copies of the redacted Deposit Account statements showing the charges.

Request for Refund

Applicant(s): SPARER et al.

Serial No.: 10/640,853

For: ACTIVE AGENT DELIVERY SYSTEMS, MEDICAL DEVICES, AND METHODS

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If there are any questions concerning this request, please contact the undersigned attorney at 612-305-1217.

CERTIFICATE UNDER 37 C.F.R. 1.8:

The undersigned hereby certifies that this paper is being transmitted via the U.S. Patent and Trademark Office electronic filing system in accordance with 37 CFR §1.6(a)(4) to the Patent and Trademark Office addressed to: Mail Stop 16, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450, on this 26th day of July, 2011.

By: Sue Dombroske
Name: Sue Dombroske

July 26, 2011
Date

AMM/skd

Respectfully submitted
By
Muetting, Raasch & Gebhardt, P.A.
P.O. Box 581415
Minneapolis, MN 55458-1415
Phone: (612)305-1220
Facsimile: (612)305-1228

By Ann M. Muetting
Ann M. Muetting
Reg. No. 33,977
Direct Dial (612) 305-1217

>

1204.01 Reinstatement of Appeal [R-3]

If an appellant wishes to reinstate an appeal after prosecution is reopened, appellant must file a new notice of appeal in compliance with 37 CFR 41.31 and a complete new appeal brief in compliance with 37 CFR 41.37. Any previously paid appeal fees set forth in 37 CFR 41.20 for filing a notice of appeal, filing an appeal brief, and requesting an oral hearing (if applicable) will be applied to the new appeal on the same application as long as a final Board decision has not been made on the prior appeal. If, however, the appeal fees have increased since they were previously paid, then appellant must pay the difference between the current fee(s) and the amount previously paid. Appellant must file a complete new appeal brief in compliance with the format and content requirements of 37 CFR 41.37(c) within two months from the date of filing the new notice of appeal. See MPEP § 1205.<

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1205 < Appeal Brief [R-3]

**>

37 CFR 41.37. Appeal brief.

(a)(1)Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31.

(2) The brief must be accompanied by the fee set forth in § 41.20(b)(2)

(b) On failure to file the brief, accompanied by the requisite fee, within the period specified in paragraph (a) of this section, the appeal will stand dismissed.

(c)(1)The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

(i) *Real party in interest.* A statement identifying by name the real party in interest.

(ii) *Related appeals and interferences.* A statement identifying by application, patent, appeal or interference number all other prior and pending appeals, interferences or judicial proceedings known to appellant, the appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal. Copies of any decisions rendered by a court or the Board in any proceeding identified under this paragraph must be included in an appendix as required by paragraph (c)(1)(x) of this section.

(iii) *Status of claims.* A statement of the status of all the claims in the proceeding (e.g., rejected, allowed or confirmed, withdrawn, objected to, canceled) and an identification of those claims that are being appealed.

(iv) *Status of amendments.* A statement of the status of any amendment filed subsequent to final rejection.

(v) *Summary of claimed subject matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

(vi) *Grounds of rejection to be reviewed on appeal.* A concise statement of each ground of rejection presented for review.

(vii) *Argument.* The contentions of appellant with respect to each ground of rejection presented for review in paragraph (c)(1)(vi) of this section, and the basis therefor, with citations of the statutes, regulations, authorities, and parts of the record relied on. Any arguments or authorities not included in the brief or a reply brief filed pursuant to § 41.41 will be refused consideration by the Board, unless good cause is shown. Each ground of rejection must be treated under a separate heading. For each ground of rejection applying to two or more claims, the claims may be argued separately or as a group. When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately. Any claim argued separately should be placed under a subheading identifying the claim by number. Claims argued as a group should be placed under a subheading identifying the claims by number. A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.

(viii) *Claims appendix.* An appendix containing a copy of the claims involved in the appeal.

(ix) *Evidence appendix.* An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the



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Deposit Account Statement

Requested Statement Month: July 2007
Deposit Account Number: 134895
Name: MUETING RAASCH & GEBHARDT PA
Attention: ACCOUNTING
Street Address 1: P O BOX 581336
Street Address 2:
City: MINNEAPOLIS
State: MN
Zip: 55458-1336
Country: UNITED STATES

DATE SEQ	POSTING REF TXT	ATTORNEY DOCKET NBR	FEE CODE	AMT	BAL
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Requested Statement Month: January 2008
Deposit Account Number: 134895
Name: MUETING RAASCH & GEBHARDT PA
Attention: ACCOUNTING
Street Address 1: P O BOX 581336
Street Address 2:
City: MINNEAPOLIS
State: MN
Zip: 55458-1336
Country: UNITED STATES

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Requested Statement Month: April 2008
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Street Address 2:
City: MINNEAPOLIS
State: MN
Zip: 55458-1336
Country: UNITED STATES

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Requested Statement Month: December 2010
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Name: MUETING RAASCH & GEBHARDT PA
Attention: ACCOUNTING
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Street Address 2:
City: MINNEAPOLIS
State: MN
Zip: 55458-1336
Country: UNITED STATES

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- 12/03 4	10640853	P-10998.00	1402	\$540.00